

§ 238.7 Decision criteria for participation.

(a) *Urban flood control.* (1) Urban water damage problems associated with a natural stream or modified natural waterway may be addressed under the flood control authorities downstream from the point where the flood discharge of such a stream or waterway within an urban area is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Those drainage areas which lie entirely within the urban area (as established on the basis of future projections, in accordance with § 238.5 of this part), and which are less than 1.5 square miles in area, shall be assumed to lack adequate discharge to meet the above hydrologic criteria. Those urban streams and waterways which receive runoff from land outside the urban area shall not be evaluated using this 1.5 square mile drainage area criterion.

(2) A number of conditions within a drainage area may limit discharges for the 10-percent flood, without proportionately reducing discharges for larger floods, such as the one-percent flood. Examples include the presence of extremely pervious soils, natural storage (wetlands) or detention basins or diversions with limited capacity. Other conditions could result in a hydrological disparity between the 10- and one-percent flood events.

(3) Division Engineers, except for NED and POD, are authorized to grant exceptions to the 800 cfs, 10-percent flood discharge criterion specified in this § 238.7(a)(1) whenever both of the following criteria are met:

(i) The discharge for the one-percent flood exceeds 1800 cfs; and

(ii) The reason that the 10-percent flood discharge is less than 800 cfs is attributable to a hydrologic disparity similar to those described in § 238.7(a)(2).

Requests for exceptions to the hydrologic criterion contained in § 238.7(a)(1) from NED and POD should be submitted to HQDA (DAEN-CWP) WASH DC 20314.

(4) Flood damage reduction works must conform to the definition in

§ 238.4(b) and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made. Flood reduction measures, such as dams or diversions, may be located upstream of the particular point where the hydrologic criteria (and area criterion, if appropriate) are met, if economically justified by benefits derived within the stream reach which does qualify for flood control improvement. Similarly, the need to terminate flood control improvements in a safe and economical manner may justify the extension of some portions of the improvements, such as levee tiebacks, into areas upstream of the precise point where Federal flood control authorities become applicable.

(b) *Storm sewer system.* Water damage problems in urban areas not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) *Man-made conveyance structures.*

(1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (i) A natural stream has been or is to be conveyed in the man-made structure; or (ii) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damage associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area

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will be assumed to be a part of the flow thereof regardless of quality characteristics.

(d) *Joint projects.* Certain conditions may exist whereby the Corps of Engineers and the Department of Housing and Urban Development (HUD), or another Federal agency, could jointly undertake a project that would be impractical if one agency were to undertake it alone. The Corps may, for example, under provisions of Section 219 of the Flood Control Act of 1965, design or construct a project that is part of a larger HUD plan for an urban area (see ER 1140-2-302). Such efforts should be undertaken only when requirements cannot be handled better by one agency acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN-CWR) WASH DC 20314 for guidance.

§ 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140-2-303).

§ 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, comprehensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services avail-

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able under Section 206 of the Flood Control Act of 1960, as amended (33 U.S.C. 709a).

§ 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service and the Corps (contained in EP 1165-2-2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Development, Farmers Home Administration and the Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A-95 clearinghouses will help to achieve this objective (see ER 1105-2-811).

PART 239—WATER RESOURCES POLICIES AND AUTHORITIES: FEDERAL PARTICIPATION IN COVERED FLOOD CONTROL CHANNELS

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§ 239.1 Purpose.

This regulation establishes policy for determining the extent of Federal participation in covered flood control channels.